

# **EXHIBIT**

# **40**



Tuesday, July 22, 2008

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### S T A T E O F N E W Y O R K

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### I N A S S E M B L Y

June 11, 2008

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weinstein, Morelle) -- (at request of the Governor) -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules and the insurance law, in relation to liability insurance policies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Section 3001 of the civil practice law and rules is amended  
2 to read as follows:  
3 S 3001. Declaratory judgment. The supreme court may render a declara-  
4 tory judgment having the effect of a final judgment as to the rights and  
5 other legal relations of the parties to a justiciable controversy wheth-  
6 er or not further relief is or could be claimed. If the court declines  
7 to render such a judgment it shall state its grounds. A PARTY WHO HAS  
8 BROUGHT A CLAIM FOR PERSONAL INJURY OR WRONGFUL DEATH AGAINST ANOTHER  
9 PARTY MAY MAINTAIN A DECLARATORY JUDGMENT ACTION DIRECTLY AGAINST THE  
10 INSURER OF SUCH OTHER PARTY, AS PROVIDED IN PARAGRAPH SIX OF SUBSECTION  
11 (A) OF SECTION THREE THOUSAND FOUR HUNDRED TWENTY OF THE INSURANCE LAW.  
12 S 2. Subsection (a) of section 3420 of the insurance law, the opening  
13 paragraph as amended by chapter 584 of the laws of 2002, is amended to  
14 read as follows:  
15 (a) No policy or contract insuring against liability for injury to  
16 person, except as provided in subsection (g) {hereof} OF THIS SECTION,  
17 or against liability for injury to, or destruction of, property shall be  
18 issued or delivered in this state, unless it contains in substance the  
19 following provisions or provisions {which} THAT are equally or more  
20 favorable to the insured and to judgment creditors so far as such  
21 provisions relate to judgment creditors:  
22 (1) A provision that the insolvency or bankruptcy of the person  
23 insured, or the insolvency of {his} THE INSURED'S estate, shall not  
24 release the insurer from the payment of damages for injury sustained or  
25 loss occasioned during the life of and within the coverage of such poli-  
26 cy or contract.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets { } is old law to be omitted.

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1 (2) A provision that in case judgment against the insured or {his} THE  
2 INSURED'S personal representative in an action brought to recover  
3 damages for injury sustained or loss or damage occasioned during the  
4 life of the policy or contract shall remain unsatisfied at the expira-  
5 tion of thirty days from the serving of notice of entry of judgment upon  
6 the attorney for the insured, or upon the insured, and upon the insurer,  
7 then an action may, except during a stay or limited stay of execution  
8 against the insured on such judgment, be maintained against the insurer  
9 under the terms of the policy or contract for the amount of such judg-  
10 ment not exceeding the amount of the applicable limit of coverage under  
11 such policy or contract.

12 (3) A provision that notice given by or on behalf of the insured, or  
13 written notice by or on behalf of the injured person or any other claim-  
14 ant, to any licensed agent of the insurer in this state, with partic-  
15 ulars sufficient to identify the insured, shall be deemed notice to the  
16 insurer.

17 (4) A provision that failure to give any notice required to be given  
18 by such policy within the time prescribed therein shall not invalidate  
19 any claim made by the insured, AN INJURED PERSON or {by} any other  
20 claimant if it shall be shown not to have been reasonably possible to  
21 give such notice within the prescribed time and that notice was given as  
22 soon as was reasonably possible THEREAFTER.

23 (5) A PROVISION THAT FAILURE TO GIVE ANY NOTICE REQUIRED TO BE GIVEN  
24 BY SUCH POLICY WITHIN THE TIME PRESCRIBED THEREIN SHALL NOT INVALIDATE  
25 ANY CLAIM MADE BY THE INSURED, INJURED PERSON OR ANY OTHER CLAIMANT,  
26 UNLESS THE FAILURE TO PROVIDE TIMELY NOTICE HAS PREJUDICED THE INSURER,  
27 EXCEPT AS PROVIDED IN PARAGRAPH FOUR OF THIS SUBSECTION. WITH RESPECT TO  
28 A CLAIMS-MADE POLICY, HOWEVER, THE POLICY MAY PROVIDE THAT THE CLAIM  
29 SHALL BE MADE DURING THE POLICY PERIOD, ANY RENEWAL THEREOF, OR ANY  
30 EXTENDED REPORTING PERIOD, EXCEPT AS PROVIDED IN PARAGRAPH FOUR OF THIS  
31 SUBSECTION. AS USED IN THIS PARAGRAPH, THE TERMS "CLAIMS-MADE POLICY"  
32 AND "EXTENDED REPORTING PERIOD" SHALL HAVE THEIR RESPECTIVE MEANINGS AS  
33 PROVIDED IN A REGULATION PROMULGATED BY THE SUPERINTENDENT.

34 (6) A PROVISION THAT, WITH RESPECT TO A CLAIM ARISING OUT OF DEATH OR  
35 PERSONAL INJURY OF ANY PERSON, IF THE INSURER DISCLAIMS LIABILITY OR  
36 DENIES COVERAGE BASED UPON THE FAILURE TO PROVIDE TIMELY NOTICE, THEN  
37 THE INJURED PERSON OR OTHER CLAIMANT MAY MAINTAIN AN ACTION DIRECTLY  
38 AGAINST SUCH INSURER, IN WHICH THE SOLE QUESTION IS THE INSURER'S  
39 DISCLAIMER OR DENIAL BASED ON THE FAILURE TO PROVIDE TIMELY NOTICE,  
40 UNLESS WITHIN SIXTY DAYS FOLLOWING SUCH DISCLAIMER OR DENIAL, THE  
41 INSURED OR THE INSURER: (A) INITIATES AN ACTION TO DECLARE THE RIGHTS OF  
42 THE PARTIES UNDER THE INSURANCE POLICY; AND (B) NAMES THE INJURED PERSON  
43 OR OTHER CLAIMANT AS A PARTY TO THE ACTION.

44 S 3. Subsection (b) of section 3420 of the insurance law is amended to  
45 read as follows:

46 (b) Subject to the limitations and conditions of paragraph two of  
47 subsection (a) {hereof} OF THIS SECTION, an action may be maintained by  
48 the following persons against the insurer upon any policy or contract of  
49 liability insurance {which} THAT is governed by such paragraph, to  
50 recover the amount of a judgment against the insured or his personal  
51 representative:

52 (1) any person who, or the personal representative of any person who,  
53 has obtained a judgment against the insured or {his} THE INSURED'S  
54 personal representative, for damages for injury sustained or loss or  
55 damage occasioned during the life of the policy or contract;

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1 (2) any person who, or the personal representative of any person who,  
2 has obtained a judgment against the insured or {his} THE INSURED'S  
3 personal representative to enforce a right of contribution or indemnity,

4 or any person subrogated to the judgment creditor's rights under such  
5 judgment; and  
6 (3) any assignee of a judgment obtained as specified in paragraph one  
7 or paragraph two of this subsection, subject further to the limitation  
8 contained in section 13-103 of the general obligations law.  
9 S 4. Subsection (c) of section 3420 of the insurance law is amended to  
10 read as follows:  
11 (c) (1) If an action is maintained against an insurer under the  
12 provisions of paragraph two of subsection (a) of this section and the  
13 insurer alleges in defense that the insured failed or refused to cooper-  
14 ate with the insurer in violation of any provision in the policy or  
15 contract requiring such cooperation, THEN the burden shall be upon the  
16 insurer to prove such alleged failure or refusal to cooperate.  
17 (2)(A) IN ANY ACTION IN WHICH AN INSURER ALLEGES THAT IT WAS PREJU-  
18 DICED AS A RESULT OF A FAILURE TO PROVIDE TIMELY NOTICE, THE BURDEN OF  
19 PROOF SHALL BE ON: (I) THE INSURER TO PROVE THAT IT HAS BEEN PREJUDICED,  
20 IF THE NOTICE WAS PROVIDED WITHIN TWO YEARS OF THE TIME REQUIRED UNDER  
21 THE POLICY; OR (II) THE INSURED, INJURED PERSON OR OTHER CLAIMANT TO  
22 PROVE THAT THE INSURER HAS NOT BEEN PREJUDICED, IF THE NOTICE WAS  
23 PROVIDED MORE THAN TWO YEARS AFTER THE TIME REQUIRED UNDER THE POLICY.  
24 (B) NOTWITHSTANDING SUBPARAGRAPH (A) OF THIS PARAGRAPH, AN IRREBUTTA-  
25 BLE PRESUMPTION OF PREJUDICE SHALL APPLY IF, PRIOR TO NOTICE, THE  
26 INSURED'S LIABILITY HAS BEEN DETERMINED BY A COURT OF COMPETENT JURIS-  
27 DICTION OR BY BINDING ARBITRATION; OR IF THE INSURED HAS RESOLVED THE  
28 CLAIM OR SUIT BY SETTLEMENT OR OTHER COMPROMISE.  
29 (C) THE INSURER'S RIGHTS SHALL NOT BE DEEMED PREJUDICED UNLESS THE  
30 FAILURE TO TIMELY PROVIDE NOTICE MATERIALLY IMPAIRS THE ABILITY OF THE  
31 INSURER TO INVESTIGATE OR DEFEND THE CLAIM.  
32 S 5. Subsection (d) of section 3420 of the insurance law is amended to  
33 read as follows:  
34 (d)(1)(A) THIS PARAGRAPH APPLIES WITH RESPECT TO A LIABILITY POLICY  
35 THAT PROVIDES COVERAGE WITH RESPECT TO A CLAIM ARISING OUT OF THE DEATH  
36 OR BODILY INJURY OF ANY PERSON, WHERE THE POLICY IS: (I) SUBJECT TO  
37 SECTION THREE THOUSAND FOUR HUNDRED TWENTY-FIVE OF THIS ARTICLE, OTHER  
38 THAN AN EXCESS LIABILITY OR UMBRELLA POLICY; OR (II) USED TO SATISFY A  
39 FINANCIAL RESPONSIBILITY REQUIREMENT IMPOSED BY LAW OR REGULATION.  
40 (B) UPON AN INSURER'S RECEIPT OF A WRITTEN REQUEST BY AN INJURED  
41 PERSON WHO HAS FILED A CLAIM OR BY ANOTHER CLAIMANT, AN INSURER SHALL,  
42 WITHIN SIXTY DAYS OF RECEIPT OF THE WRITTEN REQUEST: (I) CONFIRM TO THE  
43 INJURED PERSON OR OTHER CLAIMANT IN WRITING WHETHER THE INSURED HAD A  
44 LIABILITY INSURANCE POLICY OF THE TYPE SPECIFIED IN SUBPARAGRAPH (A) OF  
45 THIS PARAGRAPH IN EFFECT WITH THE INSURER ON THE DATE OF THE ALLEGED  
46 OCCURRENCE; AND (II) SPECIFY THE LIABILITY INSURANCE LIMITS OF THE  
47 COVERAGE PROVIDED UNDER THE POLICY.  
48 (C) IF THE INJURED PERSON OR OTHER CLAIMANT FAILS TO PROVIDE SUFFI-  
49 CIENT IDENTIFYING INFORMATION TO ALLOW THE INSURER, IN THE EXERCISE OF  
50 REASONABLE DILIGENCE, TO IDENTIFY A LIABILITY INSURANCE POLICY THAT MAY  
51 BE RELEVANT TO THE CLAIM, THE INSURER SHALL WITHIN FORTY-FIVE DAYS OF  
52 RECEIPT OF THE WRITTEN REQUEST, SO ADVISE THE INJURED PERSON OR OTHER  
53 CLAIMANT IN WRITING AND IDENTIFY FOR THE INJURED PERSON OR OTHER CLAIM-  
54 ANT THE ADDITIONAL INFORMATION NEEDED. WITHIN FORTY-FIVE DAYS OF RECEIPT  
55 OF THE ADDITIONAL INFORMATION, THE INSURER SHALL PROVIDE THE INFORMATION  
56 REQUIRED UNDER SUBPARAGRAPH (B) OF THIS PARAGRAPH.

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1 (2) If under a liability policy ISSUED OR delivered {or issued for  
2 delivery} in this state, an insurer shall disclaim liability or deny  
3 coverage for death or bodily injury arising out of a motor vehicle acci-  
4 dent or any other type of accident occurring within this state, it shall  
5 give written notice as soon as is reasonably possible of such disclaimer  
6 of liability or denial of coverage to the insured and the injured person  
7 or any other claimant.  
8 S 6. Paragraph 1 of subsection (j) of section 3420 of the insurance

9 law, as added by chapter 540 of the laws of 1984, is amended to read as  
10 follows:

11 (1) Notwithstanding any other provision of this chapter or any other  
12 law to the contrary, every policy providing comprehensive personal  
13 liability insurance on a one, two, three or four family owner-occupied  
14 dwelling, issued or {renewed} DELIVERED in this state on and after {the  
15 effective date of this subsection} THE FIRST OF MARCH, NINETEEN EIGHTY-  
16 FOUR, shall provide for coverage against liability for the payment of  
17 any obligation, which the policyholder may incur pursuant to the  
18 provisions of the workers' compensation law, to an employee arising out  
19 of and in the course of employment of less than forty hours per week, in  
20 and about such residences of the policyholder in this state. Such cover-  
21 age shall provide for the benefits in the standard workers' compensation  
22 policy issued in this state. No one who purchases a policy providing  
23 comprehensive personal liability insurance shall be deemed to have  
24 elected to cover under the workers' compensation law any employee who is  
25 not required, under the provisions of such law, to be covered.

26 S 7. Paragraph 6 of subsection (a) of section 2601 of the insurance  
27 law, as added by chapter 547 of the laws of 1997, is amended to read as  
28 follows:

29 (6) failing to promptly disclose coverage pursuant to SUBSECTION (D)  
30 OR subparagraph (A) of paragraph two of subsection (f) of section three  
31 thousand four hundred twenty of this chapter.

32 S 8. This act shall take effect on the one hundred eightieth day after  
33 it shall have become a law, and shall apply to policies issued or deliv-  
34 ered in this state on or after such date and to any action maintained  
35 under such a policy; provided, however, that effective immediately, the  
36 addition, amendment and/or repeal of any rule or regulation necessary  
37 for the implementation of this act on its effective date are authorized  
38 and directed to be made and completed by the superintendent of insur-  
39 ance on or before such effective date.

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